

Offshore transmission licensees  
Other interested parties

Direct Dial: 020 32639935  
Email: Tom.Roberts2@ofgem.gov.uk

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Dear Colleague

### **Implementing equity transaction transparency through the offshore transmission owner (OFTO) licence**

The purpose of this letter is to set out and consult on our proposal to modify the amended standard licence conditions of the offshore electricity transmission licence to include a requirement for OFTOs to report annually on the size and value of equity transactions.

Our proposal is to introduce this reporting requirement into all existing and future OFTO licences<sup>1</sup>. However, please note that the reporting requirement would not have retrospective effect. If introduced, it would only apply from the point at which the licence condition takes effect.

Any representations on the proposed licence modifications set out in this consultation must be made in writing on or before **3 July 2014**.

### **Proposal**

In our statement on future generator build tenders in July 2013<sup>2</sup> we stated that we do not believe it is necessary to introduce controls on the proceeds of OFTO equity sales, but that we *"will seek to enhance equity return transparency using information requests through existing OFTO licence conditions"*. We consider that increasing the transparency of equity transactions following licence grant will provide Ofgem with important information on appetite in the secondary equity market for investment in OFTOs. We would use this information to inform ongoing development of the offshore regime, including design of the competitive tender process.

We have considered how we could collect information on equity financing transactions that relate to the licensee without placing an excessive administrative burden on the OFTO. We have concluded that the simplest method is through introducing a new amended standard licence condition to require OFTOs to provide, on an annual basis, details of any transaction that involves the issue, sale or buy back of shares in the licensee, and/or any transaction that results in a change in an ultimate controller<sup>3</sup> of the licensee. The proposed drafting of the new amended standard condition E12-D2 (Equity Transaction Reporting

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<sup>1</sup> Licences which have been granted to OFTOs are published on Ofgem's E-Public Register. Future OFTOs in Tender Round 2 will be granted the [Generic Offshore Transmission Owner\(OFTO\) Licence V1.5 \(TR2\)](#), while OFTOs in Tender Round 3 will be granted the [Generic Offshore Transmission Owner\(OFTO\) Licence \(TR3 V2\)](#).

<sup>2</sup> [Offshore Electricity Transmission – Statement on future Generator Build tenders](#)

<sup>3</sup>As defined in Standard Condition A1 of the [Transmission Licence Standard Conditions](#)

Requirement) and associated changes in the existing condition E12-A1 (Definitions and interpretations) is set out in Appendix 1.

The information we propose to gather through this licence condition is similar to the information HM Treasury recommend should be collected through contracts for public infrastructure projects<sup>4</sup>. Ofgem would keep this information confidential and would not disclose it to any third party except as required by law.

### **Consultation questions**

We welcome comments on any aspect of the proposed reporting requirement set out in this letter and we particularly welcome responses to the specific questions set out below:

1. Do you agree with the proposed introduction of an equity transaction reporting requirement in the OFTO licence?
2. Do you agree that this equity transaction reporting requirement should be included in existing OFTO licences as well as future ones? Please note that the requirement would only apply from the point at which the licence condition took effect.
3. Do you have any views on the proposed licence drafting for the equity transaction reporting requirement (new condition E12-D2) set out in Appendix 1, including on the type of information we propose to collect and the frequency by which we do so?

### **Consultation responses**

Any responses to proposals set out in this consultation must be made in writing on or before **3 July 2014** to [Tom.Roberts2@ofgem.gov.uk](mailto:Tom.Roberts2@ofgem.gov.uk). Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). If respondents do not wish their response to be made public then they should clearly mark their response to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses. Ofgem will respect requests of keeping responses confidential, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

### **Next steps**

Responses to this consultation will be carefully considered. If we decide to proceed with the introduction of the equity transaction reporting requirement for future licences only, we will issue revised project-specific licences to the preferred bidders of those projects in Tender Rounds 1 and 2 yet to reach licence grant. We will also publish a revised version of the OFTO licence for Tender Round 3, which will be available to bidders in advance of submitting their Invitation to Tender (ITT) bids.

If, having considered responses to this consultation, we are convinced that the equity transaction reporting requirement should also be introduced for existing licences, we will publish in due course a statutory consultation notice in accordance with section 11A(2) of the Electricity Act 1989. This consultation notice would give interested parties a further chance to comment on the proposals before the Authority issues a decision notice on the introduction of the equity transaction reporting requirement into existing offshore electricity transmission licences.

Yours faithfully,

**Min Zhu**  
**Associate Director, Offshore Transmission**

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<sup>4</sup>[Private Finance 2 \(HM Treasury\)](#)

## **Appendix 1: Proposed licence drafting**

### **Amended Standard Condition E12-D2: Equity Transaction Reporting Requirement**

#### **Part A: Introduction**

1. The purpose of this condition is to require the licensee to provide an annual submission to the Authority detailing the value of any Relevant Equity Transactions.

#### **Part B: Licensee's Obligations**

2. Subject to paragraphs 3 and 4, following the date of Asset Transfer, the licensee shall prepare and submit to the Authority by [the 31 July each year][by the 31 July 2016 and then by the 31 July of each year following]<sup>5</sup> (unless otherwise agreed by the Authority), details of any and all Relevant Equity Transaction(s) that took place in the most recent Relevant Year including:
  - (a) the date of the transaction(s);
  - (b) the value of the transaction(s);
  - (c) where applicable, the number of shares in the licensee transferred, issued or bought back and the percentage of the total shares of the licensee this represents; and
  - (d) where applicable, the percentage of the licensee now owned by the new Ultimate Controller(s).
3. The licensee's initial submission to the Authority under paragraph 2 should also include details of the quantity and value of equity invested in the licensee at the point of Asset Transfer.
4. Where a Relevant Equity Transaction occurs as part of a transaction involving the transfer, issue or buy back of shares in a company of which the licensee or a holding company of the licensee is a subsidiary, details of the value of the transaction provided to the Authority under paragraph 2 shall relate only to the value placed on the licensee for the purpose of that transaction.
5. Where Asset Transfer falls between 1 January and 31 March of any year the reporting requirements specified in paragraph 2 will not be required on the first 31 July following Asset Transfer. In such circumstances the information reporting requirements specified in paragraph 2 shall be prepared and submitted on the second 31 July following Asset Transfer and must cover the period from Asset Transfer to the end of the following Relevant Year (t=2).

*[Paragraph 6 included for licences under Tender Rounds 1 and 2 only]*

6. For the purposes of this condition:

Relevant Equity Transaction

Means any transaction which:

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<sup>5</sup> For future licences, the licensee shall prepare and submit to the Authority by 31 July each year; for existing licences, the licensee shall prepare and submit to the Authority by 31 July 2016 and then by 31 July of each year following. This footnote does not form part of this licence condition and is provided for information only.

- (i) involves the issue, sale (or otherwise transfer) or buy back of shares in the licensee; and/or
- (ii) results in a change in an ultimate controller of the licensee.

*[Amendment E12-A1 for licences under Tender Round 3 only]*

## **Amended Standard Condition E12-A1: Definitions and Interpretations**

*Paragraph 6 – Include new definition*

Relevant Equity Transaction

Means any transaction which:

- (i) involves the issue, sale (or otherwise transfer) or buy back of shares in the licensee; and/or
- (ii) results in a change in an ultimate controller of the licensee.

*For information the following definitions used in the proposed drafting of amended standard condition E12-D2 will remain the same as in the current licence drafting:*

### **Licence Condition      Definition**

E12-A1	Asset Transfer	means the transfer to the licensee of the transmission system to which this licence relates as set out in Annex B to amended standard condition E12-B1 (Transmission System Area)
A1	the Authority	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
E12-A1	Relevant Year	means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year.
A1	Ultimate Controller	means <ul style="list-style-type: none"> <li>(a) a holding company of the licensee which is not itself a subsidiary of another company; and</li> <li>(b) any person who (whether alone or with a person or persons connected with him is in a position to control, or to exercise significant influence over, the policy of the licensee or any holding company of the licensee by virtue of: <ul style="list-style-type: none"> <li>(i) rights under contractual arrangements to which he is a party or of which he is a beneficiary; or</li> <li>(ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or for which he is a beneficiary but excluding any director or employee of a corporate body in his capacity as such</li> </ul> </li> </ul>

- (c) for the purposes of sub-paragraph (b) a person is connected with another person if they are party to any arrangement regarding the exercise of any such rights as are described in that paragraph; and
- (d) for the purposes of sub-paragraph (b), rights under contractual arrangements shall not include any rights in or arising under the STC Framework Agreement which are exercisable by a transmission licensee over the activities of, or as against, another transmission licensee.

## **Appendix 2: Glossary**

### **A**

#### **Asset Transfer**

The transfer to the OFTO of the transmission system to which the licence relates as set out in Annex B to amended standard condition E12-B1 (Transmission System Area) of the OFTO's licence.

#### **Authority**

The Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000. The Authority governs Ofgem.

### **E**

#### **Electricity Act**

The Electricity Act 1989 as amended from time to time.

### **I**

#### **Invitation to Tender (ITT) Stage**

The stage of a tender exercise during which the Authority may determine which qualifying bidder becomes the preferred bidder or whether to hold a Best and Final Offer (BAFO) stage. This stage starts from the distribution of the ITT document to qualifying bidders by Ofgem, and includes the preparation, submission and evaluation of ITT submissions.

### **L**

#### **Licence Grant**

Following its determination to grant an Offshore Transmission Licence to the successful bidder, the Authority confirms such determination in accordance with the tender regulations and grants such Offshore Transmission Licence to the successful bidder pursuant to section 6(1)(b) of the Electricity Act 1989.

### **O**

#### **Offshore Transmission Licence (OFTO Licence)**

The licence awarded under section 6(1)(b) of the Electricity Act 1989 following a tender exercise authorising an OFTO to participate in the transmission of electricity in respect of the relevant offshore transmission system. The licence sets out an OFTO's rights and obligations as the offshore transmission asset owner and operator.

#### **Offshore Transmission Owner (OFTO)**

The holder of an Offshore Transmission Licence.

### **P**

#### **Preferred Bidder (PB)**

In relation to a qualifying project, the qualifying bidder determined by Ofgem following its evaluation of the submissions received, to which Ofgem intends to grant the Offshore Transmission Licence subject to the satisfaction of the conditions specified by Ofgem in accordance with the tender regulations in force at that time.

### **T**

#### **Tender Round**

One or more tender exercises being held or to be held by Ofgem, with a view to determining the successful bidders to whom Offshore Transmission Licences are to be

granted for each qualifying project subject to such tender exercises, commencing on the date specified in a notice given in accordance with the tender regulations.